

PROCURATIONS AND THE ENGLISH CHURCH

PETER M. SMITH

LL.B., Ph.D., of Lincoln's Inn, Barrister
Faculty of Law, University of Exeter

The *procuratio* was originally the hospitality necessarily provided for an ecclesiastical ordinary¹ and his retinue when engaged in a visitation² of the churches and spiritual places of his jurisdiction:³ 'per procuraciones . . . intelligitur necessarium sumptuum exhibitio, que ratione visitationis debetur. . . .'⁴ By this means the provision of food, drink, and accommodation for the visitor as he perambulated his territory was placed on a formal footing, so that most of the expenses of visitation might be met, and the visitor with his attendants assured of somewhere to spend each night in reasonable comfort.

It would seem that the pattern had already been set in Roman times where local communities were required to entertain the itinerant judges when they toured the provinces.⁵ By the Middle Ages, such a demand for entertainment would have reflected the right of many feudal lords when they travelled around their domains to exact entertainment from their vassals.⁶

The taking of procurations was said by Innocent III to rest on good scriptural authority.⁷ They were an integral part of the process of visitation and therefore, at least in theory, were incapable of being remitted,⁸ for the danger was recognised that without procuration there might be no visitation, and anything which tended to hinder the visitation was not to be tolerated.⁹ It followed, therefore, that it was not possible to prescribe to be exempt from procurations due by virtue of a

¹ i.e. one who possesses an ecclesiastical jurisdiction in his own right by virtue of office and is not dependent on the grant of another: Hostiensis, *Henrici a Segusio Cardinalis Hostiensis Aurea Summa* (ed. Coloniae, 1612), lib. i, de Offic. Ord., para. 1, col. 281; Coke, *Institutes of the Laws of England*, I (Commentary upon Littleton), ed. Hargrave (19th ed., London, 1832), p. 96a; Godolphin, *Repertorium Canonikum: or an Abridgment of the Ecclesiastical Laws of this Realm* (3rd ed., London, 1687), p. 23; Richard Burn, *Ecclesiastical Law* (9th ed., London, 1842), III, 39.

² The visitation has always been an episcopal function, but in England by the second half of the twelfth century the archdeacon had begun to share in the ordinary visitatorial jurisdiction, and other inferior prelates also came to enjoy a right of visitation, e.g. cathedral deans and chapters of their own peculiar churches. For a fuller account of the law and origins of ecclesiastical visitations, see by the author, 'Points of Law and Practice concerning Ecclesiastical Visitations' (1991) 2 *Ecc. L.J.*, 189–212.

³ *Extra*, 3, 39, 6; *ibid.*, 3, 39, 23; William Lyndwood, *Provinciale, seu Constitutiones Angliae* (ed. Oxford 1679), lib. i, tit. 12, c. 2, *Quoniam autem*, gl. ad v. *procurari*, p. 67; Duarenus, *De Sacris Ecclesiae Ministeriis ac Beneficiis* (ed. Paris, 1564), lib. vii, c. 5, para. 2, f. 142v.; *Le Case de Proxies* (1604) Davis I, at 3; John Stephens, *An Historical Discourse, Briefly setting forth the nature of Procurations . . .* (London, 1661), p. 24; Godolphin, *Repertorium*, pp. 67–8; Edmund Gibson, *Of Visitations Parochial and General* (London, 1717), p. 13; Burn, *Ecc. Law*, IV, 35. (The citation of the *Corpus Juris Canonici* is in accordance with Bryson, ed., *Dictionary of Sigla and Abbreviations to and in Law Books before 1607* (Univ. of Virginia, 1975), pp. 19–20. See S. Kuttner, 'Notes on the Roman Meeting, on Planning and Method', *Traditio*, 11 (1955), p. 431 at p. 438, i.e. in the order, book, title, chapter.)

⁴ Vallensis, *Paratitula* (Louvain, 1667), lib. iii, tit. 39, c. 3, para. 1, p. 416.

⁵ C. Brühl, 'Zur Geschichte der Procuratio canonica vornehmlich in 11. und 12 Jahrhundert', *Le Istituzioni ecclesiastiche della «Societas Christiana» dei secoli XI–XII: Papato, cardinalato ed episcopato* (Atti della quinta Settimana internazionale di studio, Mendola, 1971. Milan, 1974), pp. 419–31, at p. 420.

⁶ For the right to 'le gîte' in France, see Achille Luchaire, *Manuel des institutions françaises: période des Capétiens directs* (Paris, 1892), pp. 207–8.

⁷ *Extra*, 2, 26, 16 (to the bishop of Paris, 1202; A. Potthast, *Regesta Pontificum Romanorum (1198–1304)* (Berlin, 1874–5), I, 156, no. 1778); *Extra*, 3, 39, 17 (to the primate and clergy of Milan, 1199; Potthast, I, 58, no. 603), drawing on I Corinthians, ix. 11: 'Si nos vobis spiritualia seminavimus, magnum est si nos carnalia vestra metamus?' See also Hostiensis, *Aurea Summa*, lib. iii, de Censib., para. 14, col. 1037.

⁸ *Extra*, 3, 39, 21.

⁹ Innocent IV, *In quinque Libros Decretalium, necnon in Decretales per Eundem Innocentium editas, quae*

visitation, just as it was not possible to prescribe against the visitation itself.¹⁰ Attempts by religious houses to make such claims were strongly resisted,¹¹ and in the absence of proof of an express exemption, therefore, the procuration could be enforced.¹²

Nevertheless, it would appear that procurations were regarded not only as the means whereby the visitor might be assisted with the costs and the physical burdens of the visitation, but also as a sign of his superiority and authority.¹³ Consequently, the actual costs necessarily incurred by the visitor do not appear to have been the sole consideration, and a procuration could still be demanded even though a church was so near the visitor that little time and trouble was involved.¹⁴

The obligation to provide this entertainment was fixed firmly on the parish clergy or the monastic house, etc. subject to the visitation. In the case of parish churches, this liability generally rested on the rector or the vicar of the church visited. Where there was both a rector and a vicar endowed, the visitor was still only entitled to one procuration,¹⁵ the liability being determined either by custom or by the terms of the endowment if it was still in existence.¹⁶ But where the rectory had passed into lay hands¹⁷ and there was no vicar endowed, the rector remained liable for the procurations, as the cure was still visitable.¹⁸ Even a dependent chapel was obliged to pay procurations where it had a congregation of people and a curate appointed to minister there.¹⁹ Of course, places which were exempt from the visitation of the local ordinary (peculiar) did not pay procurations to him, but to their own ordinaries. An exempt church or chapel therefore incurred no liability for procurations to the diocesan or archidiaconal ordinary in whose area it was situated,²⁰ depending on the nature of the peculiar, but only to him who had the right

modo in Sexto earundem volumine sunt inserte, et in huius operis Elencho, ut cunctas pateant adnotatae. Commentaria Doctissima (Venice, 1578), f. 185v. But in practice they were sometimes remitted: see C. R. Cheney, *Episcopal Visitation of Monasteries in the Thirteenth Century* (2nd ed., Manchester, 1983), pp. 106, 117, for examples, including Archbishop Peckham relieving religious houses of the diocese of Chichester: *Registrum Epistolarum Fratris Johannis Peckham, Archiepiscopi Cantuariensis*, ed. Charles Trice Martin (Rolls Series, 77), II, 572.

¹⁰ *Extra*, 2, 26, 16; *Supplementum ad Regesta Innocentii III*, ed. Baluze, Migne, J.-P., *Patrologiae Cursus Completus, series Latina* (Paris, 1844–95), CCXVII (Supplement), 100, no. 65 (1203); *Registorum sive Epistolarum Innocentii III*, ed. Baluze, Migne, *Parolog. Lat.*, CCXVI, 605–6, no. 87 (1212); Potthast, I, 441, no. 5022; *Les Registres de Grégoire IX (1227–41)*, ed. Lucien Auray (Bibliothèque des Ecoles Françaises d'Athènes et de Rome, Paris, 1896–1908), I, 566, no. 951; Hostiensis, *Aurea Summa*, lib. iii, de Censib., para. 13, col. 1037; *Saunderson v. Clagget* (1721) 1 P. Wms. 657 at 663.

¹¹ See *Extra*, 3, 39, 17.

¹² *Extra*, 3, 39, 17 and 24.

¹³ Stephens, *Hist. of Procurations*, p. 22.

¹⁴ Hostiensis, *Aurea Summa*, lib. iii, de Censib., para. 14, col. 1037; Stephens, *Hist. of Procurations*, p. 22. But cf. *Reg. Grégoire IX*, I, 1251–2, no. 2393. Cheney, *Episc. Visitn. of Mons.*, pp. 106–7, gives e.g. of a local visitor taking reduced procurations.

¹⁵ Council of Oxford, 1222: c. 16, David Wilkins, *Concilia Magnae Britanniae et Hiberniae* (London, 1737), I, 587–8; c. 21, F. M. Powicke & C. R. Cheney, *Councils and Synods, with other Documents relating to the English Church* (Oxford, 1964), II, 112–13; Lyndwood, *Provinciale*, lib. i, tit. 12, c. 2. *Quoniam autem*, gl. ad v. *una tantum*, p. 67; Godolphin, *Repertorium*, p. 70.

¹⁶ Simon Degge, *Parson's Counsellor* (6th ed., London, 1703), pt. ii (Law of Tythes), ch. 15, p. 283; Burn, *Eccl. Law*, IV, 38.

¹⁷ Usually on the disposition of a rectory appropriated to a former religious house.

¹⁸ Suppression of Religious Houses Act, 1539 (31 Hen. VIII, c. 13), ss. 15, 17; Payment of Pensions and Portions Act, 1543 (34 & 35 Hen. VIII, c. 19), s. 4; *Le Case de Proxies, supra; Saunderson v. Clagget* (1721) 1 P. Wms. 657, *sub nom. Sanderson v. Clagget*, 1 Stra. 421.

¹⁹ Lyndwood, *Provinciale*, lib. iii, tit. 22, c. 5, *Quamvis lex naturae*, gl. ad v. *una ecclesia*, p. 224; John Ayliffe, *Parergon Juris Canonici Anglicani* (London, 1734), p. 165. This did not apply to private chapels (*Extra*, 3, 39, 27) or to dependent chapels which did not have a curate of their own but had to rely on the curate of the superior church or a vicar appointed by him who was removable at pleasure and not perpetual: Lyndwood, *Provinciale, supra; Ayliffe, Parergon*, pp. 165, 432.

²⁰ Degge, *Parson's Counsellor*, pt. ii, 283; Edmund Gibson, *Codex Juris Ecclesiastici Anglicani* (2nd ed. Oxford, 1761), II, 976; Burn, *Eccl. Law*, IV, 38. See the Synodal Statutes of Bishop William Raleigh of Winchester, 1247?, no. 69 (Powicke & Cheney, *Councils*, p. 413).

of visitation. In the case of a royal free chapel, this was (and still is) the crown.²¹

The liability for such procurations therefore often fell on those who could least afford them, namely the local parish clergy and small monastic houses. Even when the visitors took only those procurations permitted them by law, the actual costs of entertainment of men and horses could be considerable.²²

But even more damaging was the fact that the practice of providing entertainment for visitors and their attendants was particularly open to abuse, and much of the canon law on this subject was concerned with trying to curb the exploitation indulged in by many visitors to the great hardship and detriment of the parochial clergy and other places that were visited. Procurations thus came to figure significantly in the history of visitations, being a continuing bone of contention between visitor and visitand, and in time a considerable body of law built up to define and regulate the visitor's right to receive them.

A Personal Visitation

The early canon law clearly envisaged a personal visitation of each church.²³ Yet from a very early date the practice appears to have arisen of bishops not visiting but still demanding the price of the hospitality which they would have received had they done so. This 'duplex infamia, negligentiae et avaritiae' was roundly condemned in a canon attributed to the Council of Tribur, A.D. 895,²⁴ which was accorded universal recognition in Gratian's *Decretum*.²⁵ Although this requirement was not directly referred to in the canon of the Third Lateran Council which sought to limit the scale of procurations,²⁶ the principle that there could be no procuration without personal visitation was acknowledged in the Council of London of 1200, when Archbishop Hubert Walter expressly charged visitors not to demand any procuration where they had not duly performed the office of visitation.²⁷ In the Fourth Lateran Council, 1215, it was clearly articulated as a uni-

²¹ *Le Case de Proxies* (1604) Davis, I, at 4; Anthony Fitz-Herbert, *The New Natura Brevium* (9th ed., London, 1794), I, 42A; Henry Rolle, *Un Abridgment des plusieurs Cases et Resolutions del Common Ley* (London, 1668), II, 230, I, 17; Godolphin, *Repertorium*, p. 145.

²² Richard Swinfield, bishop of Hereford, when conducting a visitation of his diocese in 1289–90, on one occasion when procurations were not received, recorded the actual cost of buying food for the attendants, irrespective of the costs of forage for his thirty-five horses, as amounting to 32s. 3d: *Roll of the Household Expenses of Richard de Swinfield, Bishop of Hereford*, ed. John Webb (Camden Society Publications, vol. 59, 1853), p. 76. If typical, then this must be measured against the total annual value of a rectory which might be little more than thirteen pounds, e.g. Lindridge, from which procurations had been received by the bishop some four days earlier (*ibid.*, p. 74), which had an assessed annual income of £13. 6s. 8d.: *Taxatio Ecclesiastica Anglicanae et Walliae auctoritate Papae Nicholai IV circa A.D. 1291*, eds. S. Ayscough and J. Caley (Record Commission, London, 1802), p. 165. Even given the inaccuracies of the *Taxatio* (see R. Graham, *English Ecclesiastical Studies* (London, 1929), pp. 271–301), this does give some indication of the high costs of procurations when compared to the income of an average rectory. When in 1321, Archbishop Melton visited Bolton Priory, the expenses incurred amounted to *circa* £25 10s. 0d., roughly one twentieth of the house's annual income: R. H. Snape, *English Monastic Finances in the later Middle Ages* (Cambridge, 1926), pp. 97–8.

²³ *Decretum Grat.*, C. 10, q. 1, cc. 4, 9, 10, 11, 12; Gibson, *Visitationes* (London, 1717), pp. 10–11.

²⁴ Attributed to the Council of Tribur, c. 26; Burchard of Worms, *Burchardi Wormaciensis Ecclesiae Episcopi Decretorum Libri Viginti*, lib. i, c. 229 (ed. Paris, 1549, Migne, *Patrolog. Lat.*, CXL, 537, at 615); Reginald of Prüm, *De Ecclesiasticis Disciplinis*, lib. i, c. 12 (Migne, *Patrolog. Lat.*, CXXXII, 185, at 194); Ivo, *Decreti*, pt. v, c. 341 (Migne, *Patrolog. Lat.*, CLXI, 47, at 426); *Monumenta Germaniae Historica: Legum, Sectio II, Capitularia Regum Francorum*, II, ed. A. Boretius and V. Krause (Hanover, 1897), pt. ii, pp. 247–8; *Corpus Juris Canonici*, ed. Aemilius Friedberg (Leipzig, 2nd ed., 1879–81), I, 613–4, n. 82. It does not appear, however, among the canons of this council in Joannes Dominicus Mansi (continued by J.B. Martin and L. Petit), *Sacrorum conciliorum nova et amplissima collectio* (Venice, Florence, Paris & Leipzig, 1759–1927), XVIII, 130 *et seq.*

²⁵ *Decretum Grat.*, C. 10, q. 1, c. 9.

²⁶ c. 4, *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner (Georgetown U.P., 1990), I, 213.

²⁷ c. 5, *Cum inter ea* (D. Whitelock, M. Brett & C. N. L. Brooke, *Councils and Synods* (Oxford, 1981), I, pt. II, 1062–3) The archbishop refers to the Council of Toledo (A.D. 646, c. 4, Mansi, *Sacr. Conc.*, X, 768–9; *Decretum Grat.*, C. 10, q. 3, c. 8) as authority for this rule.

versal rule that procurations given *ratione visitationis* were due only when the visitor actually went to the church to be visited,²⁸ and armed with this decree, Archbishop Stephen Langton in the Council of Oxford of 1222 forbade archdeacons to exact a procuracy over and above that due for the day in which they personally visited the church.²⁹

It is clear that the popes did attempt to enforce this rule of canon law.³⁰ In England this insistence that procurations were not due except upon a personal visitation of the church was maintained by the legatine councils of 1237³¹ and 1268.³² There is also evidence at diocesan level of an attempt to enforce this principle of the Fourth Lateran Council.³³

Excessive Demands

But as far as those visited were concerned, the greatest hardship must undoubtedly have been created by the sheer volume of food, drink and supplies which might be consumed by a visitor and his household, to the extent that in some cases it would seem church ornaments had to be sold to pay for them.³⁴

The prospect of a visitor accompanied by a large retinue of attendants and animals must indeed have been a very daunting one to those required to pay the costs of such entertainment! This could to some extent be kept in check by requiring that the visitation should not be protracted so as to be excessively burdensome to those being visited. Accordingly, a visitor was permitted to receive procurations for a stay of only one day at each church visited, and any additional time spent there was to be at his own expense.³⁵ But more fundamentally, the Church sought to establish as a universal principle of law that procurations taken for a visitation were not to be excessive,³⁶ for it little behoved the visitor to preach abstinence to his people when he was himself satiated.³⁷ As the Third Lateran Council sought to remind visitors, they were not to seek their own, but those things which were

²⁸ c. 33; A. García y García, ed., *Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum*. Monumenta iuris canonici, Ser. A: Corpus Glossatorum II (Città del Vaticano, 1981), p. 77; *Decrees of the Ecumenical Councils*, I, 250 (*Extra*, 3, 39, 23). See: Winchelsey, *Memoriale sive registrum Henrici Prioris Monasterii Cantuariensis*. 'Articuli super quibus inquirendum est in visitacionibus prelatorum', BL Cotton MS. Galba E IV, f. 61. Querend. a person. episc. (11), at f. 61v.; Hostiensis, *Aurea Summa*, lib. iii, de Censib., paras. 13 & 14, col. 1037; Stephens, *Hist. of Procurations*, pp. 16–22; Lyndwood, *Provinciale*, lib. i, tit. 12, c. 2, *Quoniam autem*, gl. ad v. *una tantum*, p. 67. See also *Extra*, 3, 39, 27.

²⁹ Council of Oxford, 1222, c. 27 [22], *Ut singula* (Powicke & Cheney, *Councils*, p. 114).

³⁰ e.g. see: *Regesta Honorii Papae III*, ed. Petrus Pressutti (Rome, 1888–95), II, no. 5155, p. 278 (1224); *ibid.*, no. 5858, p. 409 (1226); *Reg. Grégoire IX*, I, 115, no. 196 (1228); *ibid.*, 710, no. 1258 (1233); *ibid.*, 797, no. 1424 (1233); *ibid.*, 975, no. 1770 (1234); *ibid.*, II, 1239, no. 4754 (1239).

³¹ *Constit.* Othonis, c. 20, *De archid.* (Powicke & Cheney, *Councils*, p. 254).

³² *Constit.* Othoboni, c. 18, *Naturalis dispositionis* (Powicke & Cheney, *Councils*, pp. 767–8).

³³ See: Synodal Statutes of Bishop Poore of Salisbury, 1217 X 1219, c. 104 (Powicke & Cheney, *Councils*, p. 93); Synodal Statutes of Bishop Robert Bingham of Salisbury, 1238 X 1244, c. 32 (*ibid.*, p. 379); instructions of the Bishop of Norwich to the dean of Hengham, 1253 (Matthew Paris, *Matthaei Parisiensis Chronica Majora*, ed. H. R. Luard (Rolls Series, 57), VI, no. 116, 231–2); Synodal Statutes of Bishop Giles de Bridport of Salisbury, 1257, c. 4 (Powicke & Cheney, *Councils*, p. 553); Synodal Statutes of Bishop William de Bitton of Bath & Wells, 1258?, c. 53 (*ibid.*, p. 613); mandate of Bishop Bronescombe, 1277, re his archdeacons (*The Registers of Walter Bronescombe and Peter Quivil*, ed. F. C. Hingeston-Randolph (London, 1889), p. 42); Synodal Statutes of Bishop Peter Quivil of Exeter, 1287, c. 40 (Powicke & Cheney, *Councils*, p. 1034).

³⁴ Third Lateran Council (1179), c. 4 (*Decrees of the Ecumenical Councils*, I, 213; *Extra*, 3, 39, 6).

³⁵ *Decretum Grat.*, C. 10, q. 3, c. 8 (Eighth Council of Toledo, A.D. 646, c. 4); Lyndwood, *Provinciale*, lib. iii, tit. 22, c. 1, *Ut singula*, gl. ad v. *die visitatione*, p. 220. Thus when Bishop Giffard visited Worcester Priory in 1290 and stayed for three days, he took procurations for the first day only: *Annales Monastici*, ed. H. R. Luard (Rolls Series, 36) (*Worcester*), IV, 504.

³⁶ *Extra*, 3, 39, 21 & 23, *Le Case de Proxies* (1604) Davis I, at 3: 'ove measure et temperance'.

³⁷ 'Ne jejuniorum doctrinam rubentibus buccis praedicent': *Le Case de Proxies*, *supra*, drawing on *Decretum Grat.*, D. 35, c. 4.

Christ's.³⁸ Yet the widespread acceptance of such a principle was not easily achieved, and less conscientious visitors clearly regarded the visitation as an opportunity to indulge in an all-expenses-paid social and sporting tour of the country.

The problem of the large numbers which accompanied the visitors, however, was not a new one. This may be seen in the context of the more general legislation of the Third Council of Braga, A.D. 572, c. 2³⁹ and the Council of Chalons, A.D. 813, c. 14,⁴⁰ which was aimed at curbing the greed of bishops in exacting excessive taxes from the churches when going round their dioceses.⁴¹ As early as A.D. 646 in the Seventh Council of Toledo, an effort had been made to limit the procurations taken from each church and the size of the entourage which might accompany a bishop on the visitation of his diocese.⁴² Similarly, the English bishops were charged by the Synod of Celchyth, A.D. 787, to execute their spiritual office for the benefit of their flock and not 'for the sake of filthy lucre'.⁴³

More specifically, the Capitular of Charles the Bald, A.D. 844, recognised the burden which fell on the clergy, and provided for the sharing of the procuration, with the amounts set out that each should contribute in the form of chickens, eggs, wine and forage,⁴⁴ as well as requiring the visitors not to bring unnecessary attendants with them.⁴⁵ Detailed quantities of the items which could be demanded as procurations, such as bread, wild pigs, wine, chickens, eggs, a sheep, a pig, corn and hay for the horses, etc., were stipulated in c. 15 of the Capitula of the bishops made in Pavia between the years A.D. 845 and A.D. 850.⁴⁶

There the matter appears to have rested until Alexander III began to take an active interest in the problem of excessive procurations being demanded by those commonly exercising visitatorial authority,⁴⁷ which now regularly included archdeacons, deans, etc. The English practice evidently came under scrutiny. The large number of followers that might accompany a visitor is apparent from a letter of Alexander III addressed to the bishop of Coventry and abbot of Chester concerning the archdeacon of Chester, in which he directed them to see that, among other things, the archdeacon took only a moderate number of men and horses with him when he held a visitation.⁴⁸ Similarly, an injunction was granted by Alexander III to the clergy of Berkshire to restrain their archdeacon from visiting with dogs and hawks, and to take more than was necessary

³⁸ c. 4 (*Decrees of the Ecumenical Councils*, I, 213; *Extra*, 3, 39, 6); Council of London, 1200, c. 5, *Cum inter ea* (*Councils & Synods*, I, pt. ii, 1062–3); repeated in the Fourth Council of Lateran, c. 33, *Constitutiones Concilii quarti Lateranensis*, p. 77 (*Decrees of the Ecumenical Councils*, I, 250) (*Extra*, 3, 39, 23) and in the judgment *Romana ecclesia*, *Sext*, 3, 20, 1, § 5. Possibly referring to Philipians ii, 21.

³⁹ Mansi, *Sacr. Conc.*, IX, 839.

⁴⁰ *Monumenta Germaniae Historica: Legum, Section III, Concilia* (Hanover & Leipzig, 1906), II, pt. i, p. 276; *Decretum Grat.*, C. 10, q. 3, c. 7.

⁴¹ See also the Capitular Ecclesiasticum of Louis, A.D. 818, c. 19; *Monumenta Germaniae Historica: Legum, Section II, Capitularia Regum Francorum*, ed. A. Boretius (Hanover, 1881–3, 1890), I, 278.

⁴² Mansi, *Sacr. Conc.*, X, 768–9; *Decretum Grat.*, C. 10, q. 3, c. 8. The number of attendants was not to exceed fifty.

⁴³ c. 3; A. W. Haddan & W. Stubbs, *Councils and Ecclesiastical Documents relating to Great Britain and Ireland* (Oxford, 1871), III, 449. See also *simile*, Archbishop Oda's Constitutions, A.D. 943, c. 3 (Whitelock, Brett & Brooke, *Councils and Synods*, I, pt. i, 71).

⁴⁴ *Mon. Ger. Hist.: Legum, Sec. III, Capit. Regum Franc.*, II, pt. ii, 256, c. 4.

⁴⁵ *Ibid.*, c. 6.

⁴⁶ *Mon. Ger. Hist.: Concilia*, III (Hanover, 1984), 214.

⁴⁷ e.g. he limited the numbers that were to accompany the bishop of Noyon on his visitation of the canons of St. Quentin to thirty-five men and thirty horses (30th May, 1160–76); P. Jaffé, ed., *Regesta pontificum Romanorum ad 1189*, revs. S. Loewenfeld, F. Kaltenbrunner and P. Ewald (Leipzig, 1885–80, II, 289, no. 12576 (8390)).

⁴⁸ Jaffé, II, 376, no. 13857 (8922) (1159 X 1181). It was given universal application as *Extra*, I, 23, 6. The date is probably earlier than 1179 as there is no reference to the Third Lateran Council.

for seven riders and three additional servants on foot.⁴⁹ These mandates should be seen against a background of greed and corruption which was sufficiently prevalent to cause Henry II's Inquest of Sheriffs, 1170, art. 11, to require an inquiry to be made of the bishops as to what, how much, and for what reasons, any archdeacon took of anyone unjustly and without judgment.⁵⁰

In a concerted attempt to control the demands of visitors, the Third Lateran Council of 1179 imposed a limitation on the number of attendants who could be taken by a visitor, according to his status. An archbishop visiting his province was permitted to take with him no more than forty or fifty horses, a bishop no more than twenty or thirty, an archdeacon was not to exceed five or seven, and a rural dean was limited to two horses. In addition visitors were forbidden to take hunting-dogs and hawks with them, and were enjoined to be restrained in what they took where the church was poor.⁵¹

The canon actually measured the limits of the visitor's entourage only in terms of horses or other mounts (*evectiois numerum*), and this appears to have created an element of uncertainty as to how this should be translated into actual numbers of attendants as well as the animals.⁵² According to Lyndwood, the English practice generally seems to have been that all the attendants were mounted, including those who were to look after the horses, and in which case the total number of persons inclusive of the visitor himself was not to exceed the permitted number of horses, though he suggests that one or two additional persons on foot would not have been significant.⁵³

The canons of Lateran III were spread throughout the Latin Church, and these particular provisions relating to the taking of procurations would therefore have been known in England.⁵⁴ It was not until 1200, however, that they were formally promulgated in England in the provincial council held by Archbishop Hubert Walter at London.⁵⁵

The decree of the Lateran Council does not appear, however, to have been wholly effective. In the years immediately following the Council, therefore, the popes when attempting to enforce the limitation on the numbers of attendants laid down there, added the sanction that the sentences of any visitor who exceeded those numbers should be void and of no effect.⁵⁶ Pope Innocent III certainly appears to have been prepared to intervene energetically to curb abuse by visitors where they

⁴⁹ Thomas Rymer, *Foedera, Conventiones, Litterae, et cujuscumque generis Acta Publica* (ed. London, 1816), I. 43; Jaffé, II. 330, no. 13170. Issued in Rome on 22nd or 23rd February, but without any year given, this document almost certainly pre-dates Lateran III, since Alexander III was in Rome during February only in 1167 or 1168, or in the month immediately preceding the Lateran Council in 1179; see Jaffé, II. 145–418.

⁵⁰ Gervasi Cantuariensis, *Opera Historica*, ed. William Stubbs (Rolls Series, 73), I. 219.

⁵¹ c. 4 (*Decrees of the Ecumenical Councils*, I. 213; *Extra*, 3. 39, 6).

⁵² See Lyndwood, *Provinciale*, lib. iii. tit. 22, c. 1. *Ut singula*, gl. ad v. *evectiois numerum*, p. 220.

⁵³ *Ibid.*

⁵⁴ For examples of inclusion in contemporary English chronicles, see: Abbot Benedict of Peterborough, *Gesta regis Henrici secundi Benedicti abbatis*, ... ed. W. Stubbs (Rolls Series 49, London, 1867), I. 222–38, at p. 224; Gervase of Canterbury, *The Historical Works of Gervase of Canterbury*, ed. W. Stubbs (Rolls Series 73, London, 1879), I. 278–92, at p. 291; William of Newburgh, *Chronicles of the Reigns of Stephen, Henry II, and Richard I*, ed. R. Howlett (Rolls Series 82, London, 1884), I. 206–23, at p. 216; Roger of Hoveden, *Chronica magistri Rogeri de Hoveden*, ed. W. Stubbs (Rolls Series 51, London, 1869), II. 173–89, at pp. 173–4. Also in the Cartulary of Rievaulx, *Cartularium abbatiae de Rievallie ordinis Cisterciensis* (Surtees Society, 83, Durham, 1889), pp. 362–76, at p. 371. See also C. Duggan, 'English Canonists and the "Appendix Concilii Lateranensis"' with an analysis of the St. John's College, Cambridge, MS. 148', *Traditio*, XVIII (1962), pp. 459–68, at p. 465. For English MS collections of the canons of the Council, see Stephan Kutner, *Repertorium der Kanonistik: 1140–1234*, Prodrum Corpus Glossarum (Studi e Testi, LXXI, Città del Vaticano, 1937), I. 281, 282, 298.

⁵⁵ c. 5, *Cum inter ea* (Whitelock, Brett & Brooke, *Councils & Synods*, I. pt. ii. 1062–3).

⁵⁶ *Extra*, 5. 31, 7; *Reg. Innocent III*, Migne, *Patrolog. Lat.*, CCXIV, 124, no. 140 (Potthast, I. 19, no. 185); *Reg. Innocent III*, Migne, *Patrolog. Lat.*, CCXV, 1184, no. 88 (Potthast, I. 267, no. 3136). There appears to have been a standard form of order; see Jaffé, II. 642, no. 17654.

exceeded the numbers laid down by the Council,⁵⁷ though again it would seem with only limited effect, for in a bull addressed to Bridlington Priory, the complaint is recited that the archdeacon of Richmond on a visitation of the priory had taken with him a train of ninety-seven horses, twenty-one dogs, and three hawks!⁵⁸ It was therefore necessary to promulgate a further constitution in the Fourth Lateran Council, 1215,⁵⁹ charging visitors not to exceed the numbers of horses and attendants⁶⁰ authorized by the previous Council, to be moderate in their procurations, and not to take more than one procuracy in a day, however many churches may have been visited. It was also suggested that where it was too burdensome for one church alone, two or more churches or persons might be joined together to furnish the procuracy. If the limits of the constitution were not observed, the visitor was to restore any procuracy taken and give an equivalent amount for the benefit of the church.

The substance of this canon was given effect in England by Stephen Langton at Oxford in 1222 when he forbade the archdeacons to exceed the number of horses prescribed by the Lateran Council.⁶¹ He also drew attention to the way in which strangers were being invited to share in the procurations, and to prevent this he ordered the archdeacons not to hold their chapters at the same time and place as they were conducting a visitation.⁶² At the same time, the more influential visitands also took steps to protect themselves from excessive procurations which did not comply with the provisions of the Lateran Council.⁶³

Nevertheless, the practice of prelates taking excessive procurations appears to have been a continuing one both in England and abroad. In 1233 Pope Gregory IX was obliged to inhibit certain archbishops and others from oppressing the prior and house of Cluny 'nimiis procuracionibus'.⁶⁴ The English Church must have experienced similar difficulties, for no. 20 of the Constitutions of the Legate Otho, 1237,⁶⁵ was obliged to repeat that the numbers of attendants and horses accompanying an archdeacon should be modest. In attempting to address this and other problems of extortion, the constitution threatened that any archdeacon so doing would be compelled to give double what he had extorted to such pious uses as the bishop might determine.⁶⁶

This need for reform led to the famous judgment *Romana ecclesia* of Innocent IV in 1246, in which he asserted the right of visitors to receive only

⁵⁷ e.g. Innocent III, *Regestorum sive Epistolarum*, XIII (1210), ep. 42 to the archbishop of Larissa, Migne, *Patrolog. Lat.*, CCXVI, 230. See U. Berlière, 'Le droit de procuracy ou de gîte. Papes et légats', *Académie Royale de Belgique. Bulletins de la classe des lettres et des sciences morales et politiques* (Brussels, 1919), pp. 509–38, at p. 513.

⁵⁸ Dugdale, *Monasticon Anglicanum*, ed. J. Caley etc. (London, 1817–30), VI, pt. i, no. xiii, 288.

⁵⁹ c. 33, *Constitutiones Concilii quarti Lateranensis*, p. 77 (*Decrees of the Ecumenical Councils*, I, 250) (*Extra*, 3, 39, 23).

⁶⁰ The canon refers to the limits set out in the previous Lateran Council concerning 'vectionum et personarum', but c. 4 of that Council makes no specific mention of persons: see above.

⁶¹ c. 27 [22], *Ut singula* (Powicke & Cheney, *Councils*, p. 114). The reference here is to Lateran III, c. 4. Notwithstanding c. 33 of the Fourth Lateran Council in 1215, the constitution still speaks in terms of the 'vectionis numerum' derived from the earlier council.

⁶² See also Constits. Othonis, 1237, c. 20, *De archid.* (Powicke & Cheney, *Councils*, p. 254).

⁶³ e.g. the abbot and convent of Easby obtained a papal indulgent in 1225 which relieved the house from the payment of any procurations to the archdeacon of York if he exceeded the numbers laid down by the Lateran Council: Easby Register, BL Egerton MS 2827.

⁶⁴ Pothast, I, 779, no. 9089. See also *ibid.*, I, 898, no. 10601, and for a later date (1300), II, 1996, no. 24964.

⁶⁵ Powicke & Cheney, *Councils*, p. 254.

⁶⁶ *Ibid.* See John of Athon, *Constitutiones Legatimae d. Othonis et d. Othoboni*, (bound with Lyndwood, *Provinciale*, Oxford, 1679), Constits. Othoboni, c. 19, *Deus omnipotens*, gl. ad v. *in duplum*, p. 116. The gloss is on words of c. 20 of Otho's Constitutions taken from c. 19 of Othobon's Constitutions of 1268 (Powicke & Cheney, *Councils*, pp. 768–9), though the latter is more specifically directed at the abuse of taking money in lieu of punishment.

those procurations allowed by the canon law.⁶⁷ Yet papal intervention was still necessary on a number of occasions to compel prelates to observe the limitations imposed by the Lateran Councils.⁶⁸ Furthermore, despite episcopal statutes on the subject⁶⁹ and Innocent IV's decree of 1246, the eighteenth constitution of the Legate Othobon's Constitutions of 1268 was still able to refer to the 'superfluum et honerosam multitudinem hominum' who were wont to disturb the peace of the Church, and invoked the constitution of Innocent IV to show what was permitted by law.⁷⁰

The Taking of Money

By this date, however, another equally damaging problem had begun to command the attention of the canon law. The practice in question was that of compounding the procuration 'in virtualibus' for a sum of money.

For as long as there had been visitations which attracted procurations, it must have been practically impossible to have entertained the visitor with his household and attendants in some of the smaller religious houses or in the modest accommodation enjoyed by much of the parish clergy, and it seems that in such circumstances an agreed sum of money in lieu might have been given to the visitor to pay for his lodging and food elsewhere.⁷¹ Yet not only did a procuration in the form of a money payment open up the possibility for visitors to extort excessive procurations which might bear little relation to the actual costs of the visitation, but it was even easier to exact payment without having been anywhere near the church. Indeed, the suggestion implicit in the canon *Ut singula* of the Council of Oxford, 1222 is that some archdeacons were actually taking money as a fee for *not* visiting!⁷²

The canons which stipulated that there could be no procuration without visitation, however, may have ameliorated the problem, they did not cure it. More drastic action was necessary, and in an attempt to strike at the root of the abuse, Innocent IV decreed in his judgment *Romana ecclesia* of 1246 that money was not to be taken in place of virtuals under the threat of a malediction until the money was restored twofold.⁷³ Yet this decree does not appear to have been effective in putting a stop to the taking of money.

This was evidently the case in England, for when in 1249–50 Archbishop Boniface attempted a visitation of his province he appears to have taken excessive procurations in the form of money.⁷⁴ This visitation precipitated an appeal to Pope Innocent IV by the diocesan bishops in which they challenged the right of the Archbishop to visit their dioceses except where the bishop had been negligent.⁷⁵ The pope did in fact pro-

⁶⁷ *SEXT.* 3, 20, 1, § 5.

⁶⁸ For example, *Les Registres d'Innocent IV (1243–54)*, ed. Elie Berger (Bibliothèques des Ecoles Françaises d'Athènes et de Rome, Paris, 1884–1921), I, 121, no. 709, 124–5, no. 733, III, 435, no. 7634; Potthast, I, 649, no. 7536, II, 1371, no. 16750, 1739, no. 21516.

⁶⁹ Synodal Statutes of Bishop Robert Bingham of Salisbury, 1238 X 1244, c. 32 (Powiecke & Cheney, *Councils*, p. 379); Synodal Statutes of Bishop Walter de Cantilupe of Worcester, 1240, c. 45 (ibid., p. 308); Synodal Statutes of Bishop William de Bitton of Bath & Wells, 1258?, c. 53 (ibid., p. 613).

⁷⁰ Powicke & Cheney, *Councils*, pp. 767–8. Even by the end of the century, it would still seem to have been necessary to inquire whether the bishops were burdening the church in this manner: Winchelsey, *Articles*, f. 61, de visit. (2), at f. 62v.

⁷¹ This appears not to have been uncommon in the twelfth century: see Brühl, 'Zur Geschichte der Procuratio canonica vornehmlich in 11. und 12 Jh.', p. 429.

⁷² c. 27 [22] (Powiecke & Cheney, *Councils*, p. 114). See also Constats. Othonis, c. 20, *De archid.* (Powiecke & Cheney, *Councils*, p. 254).

⁷³ *SEXT.* 3, 20, 1, § 5.

⁷⁴ Matthew Paris alleged that Rochester cathedral priory paid more than 30 marks, and that he took a total of 6000 marks in the course of the visitation: *Chronica Maj.*, V, 120–3, 348.

⁷⁵ *Ann. Mon.* (Barton), I, 300, (Dunstable), III, 181; Matthew Paris, *Chronica Maj.*, V, 186–7, 225–6; *Chronicle of the Monastery of Abingdon, 1219–1304*, ed. & trans. J. O. Halliwell (Berkshire Ashmolean Soc., Reading, 1844), pp. 7–8.

nounce in favour of the archbishop's right of visitation,⁷⁶ but as part of their objection, more general questions as to the quantum and form of procurations had also been raised by the bishops, and a few weeks later he wrote to the bishops of Lincoln, London, and Wells to the effect that the procurations due to a prelate were to be 'in victualibus et necessariis' and that these having regard to the common price of things in each place, or the cost involved, were not to exceed 'the amount or value of four silver marks' (*summam vel valentiam quatuor marcarum argenti*).⁷⁷

It may perhaps be appreciated that the prohibition of money payments in place of procurations in kind may not have been seen as an unqualified benefit by those liable, for the excesses of attendants, high cost of entertainment and the uncertainty as to the costs involved may have made the payment of a fixed sum of money a relatively attractive alternative to the giving of procurations in kind. Hence, if a fixed money payment was not to be permitted, then there had to be some limit to the procurations which could be exacted by reference to their monetary value, and this indeed was what Innocent IV sought to do in his directions to the English bishops. Four marks was, however, the maximum value of procurations permitted, and it was further enjoined that the numbers of attendants decreed in the Lateran Council had to be observed; excessive procurations were to be returned to those from whom they had been received, and double the excess was to be given to the poor out of the prelate's own pocket.⁷⁸ Interestingly, it is as a result of a mandate from these three bishops, presumably given in response to this papal directive, that in 1253 Bishop Walter Suffield of Norwich sent instructions concerning procurations to his rural deans in which he laid down the maximum value of the procurations capable of being taken in an archidiaconal or episcopal visitation.⁷⁹ Nevertheless, even here he specifically sanctioned the giving of procurations in the form of money if preferred by the visitors (*vel ipsam numeratam pecuniam, prout maluerint*) contrary to the *jus commune* as it then stood.⁸⁰

Perhaps it is not surprising that there was confusion. In the same year Pope Innocent had granted an indulgence to the rectors of the English churches in which the number of attendants for whom procurations could be claimed as laid down by the Third Lateran Council were quantified in money, apparently as an alternative. An archbishop was to be permitted fifty attendants or four marks⁸¹, a bishop thirty horses or thirty shillings, archdeacons seven horses or seven shillings and threepence halfpenny.⁸²

Innocent IV's letter concerning the English archbishop in which the value of procurations was set at a maximum of four marks was given wider application in 1254 in an attempt to establish a general limitation on the hospitality in food and necessities which could be exacted by a visitor.⁸³

This decree, however, seems not to have had quite the effect intended. It must be remembered that from the mid-thirteenth century there existed a climate in which services of all kinds were being commuted into fixed money payments, so that at this time the demand for the payment of a certain sum of money in lieu of procurations in kind must have been strong. Moreover, this pressure towards a fixed payment might to a not inconsiderable extent be sustained by the decree

⁷⁶ Matthew Paris, *Chronica Maj.*, V, 302; confirmed by Boniface VIII in *Sext.* 3, 20, 5.

⁷⁷ *Ann. Mon. (Burton)*, I, 300–1; Potthast, II, 1205–6, nos. 14626–14628.

⁷⁸ *Ibid.*

⁷⁹ Matthew Paris, *Chronica Maj.*, VI, 231–2. The archdeacons were not to receive procurations in excess of 7s. 6d. and less from minor churches with little property. He valued his own procurations at 31s. 10d.

⁸⁰ i.e. *Sext.* 3, 20, 1, § 5.

⁸¹ 'vel pro visitatione habeat quatuor marcas . . .'

⁸² *Ann. Mon. (Dunstable)*, III, 186.

⁸³ *Reg. Innocent IV.*, III, 377, no. 7314; Potthast, II, 1255, no. 15259. See also *Reg. Innocent IV.*, III, 420, no. 7556.

which placed a monetary value on the procuration, notwithstanding the clear assertion that procurations were not to be taken in money.

In practice, the decree and the previous letter to the English bishops were often observed only to the extent that the procuration fee might be limited to four marks,⁸⁴ yet the annalist of Osney goes so far as to describe Archbishop Boniface as taking four marks 'in denariis secundum concilium generale'.⁸⁵ As Professor Cheney points out, 'the statement shows what uncertainty prevailed on these crucial points of law'.⁸⁶

The practice of taking money therefore appears to have continued notwithstanding the injunction of Innocent IV to the contrary. As late as 1274 in the Second Council of Lyons, Gregory X complained that many were still flouting the decree *Romana ecclesia*, with the result that the Council re-enacted the decree with the additional sanction that any money taken, or procurations received without visitation, had to be restored double within a month, or the offender if an archbishop or bishop would be excommunicated, and inferior clergy would be suspended from office and benefice, until they had made full satisfaction of this double restoration.⁸⁷ This was clearly an attempt to give the decree teeth, for it meant that an offender could no longer elect to remain in bad grace in preference to repaying double the money taken. Yet the requirements of the canon law for personal visitation and procurations in victuals appear to have been very easily circumvented on the grounds of custom. Having been authorized by the same Council of Lyons to levy a tenth on all clerical revenues,⁸⁸ Gregory X was content to include the income derived from those procurations which 'by ancient custom' were paid in money even where no visitation had taken place.⁸⁹

The reiteration of *Romana ecclesia* by the Council of Lyons, seems to have had little impact on the practice of the English prelates, for in 1276 the Annals of Osney contain a complaint (which elicited a reference to Archbishop Boniface 'bonae memoriae') that Archbishop Robert Kilwardby of Canterbury had taken over twenty-four marks,⁹⁰ and Archbishop Peckham when visiting the same monastery in 1284 had demanded procurations in money according to what he claimed was an ancient custom.⁹¹ Similarly, Godfrey Giffard, bishop of Worcester, was regularly taking procurations in money in the early 1290s.⁹²

Despite these measures aimed at reducing the excessive demands of visitors, therefore, the burden of entertaining the visitors and their entourage remained considerable, and abuses appear to have continued. For instance, when Bishop Giffard of Worcester visited Worcester Priory in 1290, he did so with 140 horses and stayed there for three days 'cum magna multitudine'.⁹³

The Payment of Money Permitted

Ultimately, it must have become apparent that the only way to curb the exces-

⁸⁴ e.g. Archbishop Boniface in his visitation of 1253 (*Ann. Mon. (Dunstable)*, III, 190) and at Worcester in 1260 (*Ann. Mon. (Worcester)*, IV, 446). Archbishop Peckham took four marks at Peterborough in 1284: *Chronicon Petroburgense*, ed. Thomas Stapleton (Camden Soc., O.S., XLVII, London, 1849), p. 100.

⁸⁵ *Ann. Mon. (Osney)*, IV, 270-1.

⁸⁶ *Episc. Visit. of Mons.*, p. 108, n. 7.

⁸⁷ c. 24, *Decrees of the Ecumenical Councils*, I, 327 (Sext. 3, 20, 2).

⁸⁸ Constit. I, *Decrees of the Ecumenical Councils*, I, 310.

⁸⁹ Instructions issued by Gregory X for assessing clerical income for the levy of the tenth imposed by the Council of Lyons, 1274: W. E. Lunt, *Papal Revenues in the Middle Ages* (Columbia University Press, 1934, repr. New York, 1965), II, 163.

⁹⁰ *Ann. Mon. (Osney)*, IV, 270-1.

⁹¹ *Ann. Mon. (Osney)*, IV, 297.

⁹² *The Register of Bishop Godfrey Giffard (1268-1301)*, ed. J. W. Willis Bund (Worcestershire Hist. Soc., Oxford, 1899-1902), II, 379, 426, 434; Cheney, *Episc. Visit. of Mons.*, p. 109.

⁹³ *Ann. Mon. (Worcester)*, IV, 504.

sive demands of visitors which fell on the clergy and monastic houses was to substitute a reasonable sum of money for the procurations paid 'in victualibus'. The law regarding procurations thus came to be reviewed in a constitution of Boniface VIII made in 1298.⁹⁴ For the first time procurations in money were to be officially sanctioned,⁹⁵ though only if those persons liable for the procurations were willing. The danger that the taking of money might make it easier for visitors to avoid actually having to visit the place making the payment⁹⁶ was evidently anticipated, for the constitution took care to reiterate the principle of the canon law that a visitor was not able to receive more than one procuration per day, however many churches he may visit, and that a personal visitation must have taken place before he was entitled to any procuration, whether in money or in kind.⁹⁷ It also appears to have been recognised that though an ordinary might be entitled to his own procurations in money, this did not extend to a commissary visiting on his behalf who was to receive procurations in kind only.⁹⁸

Nevertheless, there were still difficulties, for the ambiguity in allowing money to be paid 'pro sumptibus moderatis faciendis in victualibus',⁹⁹ left the way open for the visitors to demand exorbitant sums of money by way of procurations. Moreover, the abuse was still continuing,¹⁰⁰ particularly it seems with respect to the visitation of monastic houses, as is evident from Clement V's decree in the Council of Vienne, 1311–12, in which he painted a picture of oppression, greed and pillage.¹⁰¹ The cost of procurations therefore continued to impose a very substantial burden on the churches and religious houses visited. What was really required was a certain sum of money to be fixed by law which would wholly discharge the liability to provide procurations in kind.

This was finally effected by Benedict XII in the constitution *Vas electionis* of 1336 which established regional rates for the payment of procurations in money (expressed in the form of 'Turonensium argenti') or the value of expenses which could be taken according to the quality of the visitor and the condition of the parties visited, which were not to be exceeded even on the ground of custom.¹⁰² In England, an archbishop was to demand no more than the value of 320 silver Tours from his own and the cathedral churches of his suffragans; from larger monasteries, churches etc. having communities of more than twelve, 260 silver Tours; from smaller foundations 220 silver Tours; a bishop might have no more than 220 silver Tours from his cathedral church; from monasteries and churches etc. with communities of more than twelve, no more than 180 silver Tours; from other places no more than 150 silver Tours; archdeacons were limited to no more than 50 silver Tours.¹⁰³

⁹⁴ *Sext.*, 3, 20, 3.

⁹⁵ Winchelsey, *Articles*, f. 61. Querend. a person, episc. (10), at f. 61v., asks whether the bishop had received money or entertainment before this recent constitution of Pope Boniface.

⁹⁶ e.g. Bishop Giffard taking money from the prior of Stanley Monachorum without visiting the house: *Reg. Giffard (Worcester)*, II, 434; Cheney, *Episc. Visit. of Mons.*, 109.

⁹⁷ *Sext.*, 3, 20, 3. Archbishop Winchelsey, c. 1300. *Articles*, f. 61, de visit. (1), at f. 62v., inquires whether the bishop receives his procurations *ratione visitationis* in money and whether he receives procurations from a place that he does not personally visit. See Lyndwood, *Provinciale*, lib. i, tit. 12, c. 2. *Quoniam autem*, gl. ad v. *una tantum*, p. 67.

⁹⁸ *Sext.*, 1, 16, 6; Lyndwood, *Provinciale*, lib. i, tit. 10, c. 1. *Ut archidiaconi*, gl. ad v. *videant*, p. 50; Godolphin, *Repertorium*, p. 69. This appears to have been observed by Archbishop Arundel when visiting the diocese of St. David's by commissary in 1397: *Register of Thomas Arundel*, Lambeth Palace Library, f. 456v.

⁹⁹ *Sext.*, 3, 20, 3.

¹⁰⁰ Brühl, 'Zur Geschichte der Procuratio canonica vornehmlich in 11. und 12 Jh.', p. 422, suggests that the abuse was at its worst in the fourteenth century.

¹⁰¹ c. 20, *Decrees of the Ecumenical Councils*, I, 377 (*Clem.*, 3, 13, 2).

¹⁰² *Extravag. Comm.*, 3, 10, 1.

¹⁰³ Twelve silver Tours were to be reckoned as being worth one gold Florentine florin: *Extravag. Comm.*, 3, 10, 1. At this date, a Florentine florin was valued in sterling at between about 3s. and 4s.: P. Spufford,

A Customary Payment

By the canon law, the claim for any procuration, at least in theory, pre-supposed an actual visitation having taken place, and the choice of whether to pay the procurations in money or kind was still said to remain with those visited.¹⁰⁴ The reasoning which underlay the early objections to the payment of money was therefore still pertinent. While the procuration 'in victualibus' was uncertain and variable, the canon law was primarily concerned to curb the demands of visitors so as to prevent those visited being excessively burdened by the expenses incurred in providing such entertainment. *Of necessity, the visitor would have had to visit the church or monastic house personally in order to receive such hospitality.* Hence the early strictures against the taking of money in lieu, for this would have undermined the one element which inherently ensured a personal visitation. Yet once procurations had become regular payments of a fixed sum of money more in the nature of a fee, very different considerations applied to determine when they could be demanded, for the payment then came to be governed not by the canon law but by custom, and a customary payment of procurations could therefore be enforced irrespective of whether the visitor had actually carried out a visitation of the church. This was to have a profound effect on the law and practice of visitations.

As early as 1342, Archbishop Stratford felt obliged to issue a constitution to rectify the slackness and greed of the archdeacons which had resulted from allowing money payments to be made.¹⁰⁵ In it he reasserted the canonical precepts that the receipt of procurations was prohibited except upon a diligent and personal visitation, and that if several churches were visited in a day, only one procuration might be demanded, all the churches visited in the day making a proportionate contribution. But to no avail, for once the procuration had become payable by custom, the canonical prerequisites for payment could be ignored.

The personal visitation of the individual parishes required by the canon law now began to be dropped by the archdeacons,¹⁰⁶ for they were content to receive the procuration as a customary payment, and the present practice evolved of holding visitations of a number of parishes centrally. Very frequently the rural deanery was used as the basis for the grouping of parishes, the visitation itself being conducted in one of the principal churches of the deanery to which the clergy, churchwardens, etc. of the constituent parishes were summoned, possibly using the machinery of the rural chapter.

Procurations could now be discharged by the payment of a fixed sum of money which was easily calculable, and ecclesiastical visitors took care to record in detail the procurations payable by each parish, religious house, or deanery.¹⁰⁷ William Lyndwood, writing in the early fifteenth century, tells us that it had become the common practice in England for the archdeacon to receive payments by way of procuration of seven shillings and six pence, which comprised eighteen pence for himself and his horse, and twelve pence for every other animal and its rider.¹⁰⁸ However, this figure is not borne out in the visitation records themselves. Indeed, there seems never to have been what might be described as a standard procuration,

Handbook of Medieval Exchange (London, 1986), pp. 198–201.

¹⁰⁴ *Sext.*, 3, 20, 3; *Extravag. Comm.*, 3, 10, 1; *Constits. Provinc. Stratford*, c. 7. *Quamvis lex naturae* (Wilkins, *Concilia*, II, 698–9); Lyndwood, *Provinciale*, lib. i, tit. 12, c. 2. *Quoniam autem*, gl. ad v. *procurari*, p. 67; *ibid.*, lib. iii, tit. 22, c. *Quamvis lex naturae*, gl. ad vv. *vel pecunia & visitans*, p. 223.

¹⁰⁵ *Constits. Provinc. Stratford*, c. 7. *Quamvis lex naturae* (Wilkins, *Concilia*, II, 698–9).

¹⁰⁶ Hamilton Thompson, *English Clergy and their Organisation in the Later Middle Ages* (Oxford, 1947), pp. 61–2, suggests that this was happening sometime in the course of the fourteenth century. The preamble in Archbishop Stratford's constitution of 1342 (*supra*) suggests that by this date archdeacons frequently were not going personally to the churches to be visited.

¹⁰⁷ See e.g. *Register of Warham*, Lambeth Palace Library, I, ff. 88–91v., 213v., 239, 247–48, 271v., 278v.–280v., 285v.–286, 289v.–291, 310 (references throughout are to the original foliation (Roman numerals), not the archival renumbering).

for the procuration differed widely not only as between dioceses, but even within a diocese from parish to parish. The sum of 6s 8d¹⁰⁹ may perhaps be seen to have been the single most commonly recurring figure,¹¹⁰ but there was evidently a very wide range in the amount of the procurations payable which may well have reflected the importance and income of the church or house visited.¹¹¹

It is clear that by the time of statute 26 Hen. 8, c. 3,¹¹² procurations had become sufficiently known and fixed charges for each benefice to be able to deduct them from their income for the purpose of calculating payments of first fruits and tenths.¹¹³ Similarly, ecclesiastical persons who had been entitled to receive procurations before the dissolution of the monasteries were given the right by the statute 34 & 35 Hen. 8, c. 19,¹¹⁴ to claim the same procurations against the new occupiers of the land. This legislation thus had the effect of making an occupier by the King's grant of a former monastic house liable for the procurations customarily paid to the ordinary even though such persons were not themselves visitable. Here then procurations were payable although there could be no visitation. *Le Case de Proxies*¹¹⁵ provides an example of this liability to pay procurations without visitation. The bishop of Meth before the dissolution of the monasteries had received money as procurations for a commandry in the possession of the Hospital of St. John of Jerusalem in Ireland, and for an inappropriate rectory belonging to the Abbey of Thomascourt. When both the hospital and abbey were dissolved by the statute 31 Hen. 8, c. 13,¹¹⁶ all their possessions were vested in the crown, but those procurations which previously had been paid to bishops and their successors were expressly safeguarded.¹¹⁷ These procurations were subsequently granted by the bishop of Meth to Henry VIII, his heirs and successors, who at the time of the grant was in actual possession of the commandry and rectory. When later Queen Elizabeth granted the commandry and rectory by her letters patent to the defendant, Dr Forth, the question arose whether he should be charged with these procurations. It was argued that the procurations had been extinguished when the houses were dissolved, since the visitation of them was the sole reason for the payment of

¹⁰⁸ Lyndwood. *Provinciale*, lib. iii, tit. 22, c. 5. *Quamvis lex naturae*, gl. ad v. *solet solvi*, p. 224.

¹⁰⁹ The Noble, which was the principle English coin after its introduction in 1344, and until 1464 was worth 6s 8d (one-third of a pound or half a mark): Spufford, *Handbook of Medieval Exchange*, p. 198.

¹¹⁰ e.g. see the visitation of the churches of St. Paul's in 1458 (by the dean and a named canon residentiary): W. Sparrow Simpson, *Visitations of Churches belonging to St. Paul's Cathedral* (Camden Soc., 2nd series, 55, 1895), pp. 75, 80, 88, 97, 108.

¹¹¹ In Archbishop Warham's visitation of the diocese of Canterbury in 1512, wide variations in the procurations payable by parish churches and vicarages are apparent: *Reg. Warham*, I, ff. 88–91v. The smallest appears to have been 20^d for both churches and vicarages, rising to 66s. 8d., e.g. Minster-in-Thamet, Deanery of Westbere: *ibid.*, f. 89. For the visitation of the diocese of Exeter *sede vacante* in 1503–4, procurations are recorded for the religious houses and the totals for each rural deanery: *Reg. Warham*, I, f. 213v. So too for the visitation of the diocese of Ely (1505–6): *Reg. Warham*, II, ff. 247–48. The sum of 66s. 8d. again figures in the visitation of the diocese of Lincoln *sede vacante* in 1513–14 where it was taken from virtually everyone, whether rural deanery, monastic house, priory, or college (*Reg. Warham*, II, ff. 285v.–286), except the college at Eton which paid only 40s. (*Ibid.*, f. 286). Likewise the sum of 66s. 8d. was consistently taken in Warham's visitation of the diocese of Lincoln *sede vacante* in 1520–1 (*Reg. Warham*, II, ff. 289v.–291) and of Salisbury *sede vacante* (*Reg. Warham*, II, f. 310). The sum of 53s. 4d. was received from each of eighty named churches except two in the course of the visitation of Hereford *sede vacante* in 1516: *Reg. Warham*, II, f. 271v. The enduring nature of the sums taken by way of procuration is apparent from the eighteenth century account books of the bishop of Exeter's visitations, e.g. that of 1724, Devon Record Office MS Chanter 221. Most common is the sum of 6s. 8d., but with numerous exceptions, e.g. East Budleigh rated at 10s. (penultimate fo., v.). For this parish, see also: *Valor Ecclesiasticus* (see n. 113, *infra*), II, 310; *Archdeacon of Exeter v. Green* [1913] P 21.

¹¹² First Fruits and Tenths Act, 1534, s. 10.

¹¹³ This is evident throughout the *Valor Ecclesiasticus Temp. Henr. VIII. Auctoritate Regia* (Record Commission, London, ed. 1810–34), which was a survey of ecclesiastical revenues compiled to put the provisions of the above act into effect.

¹¹⁴ Payment of Pensions and Portions Act, 1543.

¹¹⁵ (*R. v. Sir Ambrose Forth*) (1604) Davis I.

¹¹⁶ Suppression of Religious Houses Act, 1539.

¹¹⁷ ss. 15, 17.

procurations 'et cessante causa cessat effectus'. This argument, however, was not accepted by the court, which preferred to draw an analogy with *Sir William Capel's Case*¹¹⁸ where the payment of rent by a socage tenant 'pro wardo castri', was held still due despite the fact that the castle had ceased to exist. Accordingly, the court concluded that the procurations had by composition become part of the settled revenues of the bishop which were incapable of being extinguished.

The evident incongruity of a practice so opposed to the requirements of the canon law, caused the manner of conducting visitations by means of centres to be challenged early this century in the case of *Archdeacon of Exeter v. Green*.¹¹⁹ Here, however, the court was clear that the payment of procurations was not by this date governed by the original canon law, but had become a customary payment which was due and payable whether the visitation was of the actual church itself or was conducted in a central place for a number of churches without the visitor having to go to each particular church.

Procurations had thus ceased only to be due *ratione visitationis*, but could be demanded on the foot of custom, and it was on this ground that some archdeacons claimed a customary right to their procurations even in those years in which they did not visit because the bishop was holding his visitation.¹²⁰

The procuration, nevertheless remained an ecclesiastical payment. Accordingly, it could be enforced by sequestration or other ecclesiastical process.¹²¹ Since custom had become the ground upon which procurations were due and owing, however, questions were raised as to whether an action to enforce the payment of a procuration, inasmuch that it might incidentally have involved a trial of the custom upon which the right to the procuration was founded, was cognizable in the spiritual courts. In the case of *Kirton v. Guilder*,¹²² a consultation was granted to permit the archdeacon of York to bring an action in the church courts for his procuration, but in granting the consultation, the Court of King's Bench had stipulated that it was only with respect to the procurations generally, and if the quantum was denied by the plaintiff, then the prohibition would stand. The matter was settled by the case of *Saunderson v. Clagget*¹²³ where Dr Clagget, the archdeacon of Sudbury, had brought an action in the Norwich Consistory Court for a procuration of 6s. 8d. against Saunderson, an impropiator, who had then sought a prohibition. The court held that a procuration was an ecclesiastical duty and could therefore be recovered only in a spiritual court, especially as it was claimed both by and from an ecclesiastical person, and this remained so even where it was alleged that the procuration was due as a customary payment. In that event, the trial of the custom was to be in accordance with the ecclesiastical law rules as to what constituted a custom, i.e. forty years user.

Procurations were finally abolished in 1963 and are no longer payable.¹²⁴ Nevertheless, though they have now ceased to exist in the Church of England, they figured significantly in the ancient canon law of the Roman Church and the later post-Reformation English ecclesiastical law, and undoubtedly were a major influence in shaping the form and practice of the ecclesiastical visitation in England.

¹¹⁸ *Sub nom. Capell v. Aprice* (1511) Moo. K.B. 1.

¹¹⁹ [1913] P. 21.

¹²⁰ Godolphin, *Repertorium*, p. 69; Gibson, *Codex*, II, 976.

¹²¹ Gibson, *Codex*, II, 1546.

¹²² (1680) Raym. Sir T.

¹²³ (1721) 1 P. Wms. 657.

¹²⁴ Ecclesiastical Jurisdiction Measure 1963, s. 83 (3).